



# California Fair Political Practices Commission

A-85-212

October 7, 1985

Richard Winnie  
City Attorney  
1 City Hall Plaza  
Oakland, CA 94612

Re: Telephone Advice to  
Assistant City Attorney  
Ted Lakey

Dear Mr. Winnie:

This letter concerns telephone advice I recently provided to Mr. Ted Lakey of your office, regarding a possible conflict of interest situation in the City of Oakland. Because we have received several inquiries about this advice, from your office, from the press, and from Mr. Curt Sproul on your behalf, I thought it would be appropriate to provide you with a summary of my telephone advice to Mr. Lakey.

On September 20, 1985, I received a telephone call from Oakland Assistant City Attorney Ted Lakey regarding the duties of City Councilmember Leo Bazile. Mr. Lakey informed me that a decision concerning the approval of a multi-million dollar hotel project was pending before the City Council. The developer of the hotel project is a client of Councilmember Bazile's law firm, although the law firm is not representing the developer on this hotel project. Councilmember Bazile has a 10-percent or greater ownership interest in his law firm, and his pro rata share of the law firm's income from the developer in the preceding 12 months exceeds \$250. Mr. Lakey asked whether, based on these facts, Councilmember Bazile must disqualify himself from participating in decisions concerning the approval of the hotel project.

I advised Mr. Lakey that, based on the information he had provided, Councilmember Bazile must disqualify himself from participating in decisions concerning the approval of the hotel

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project. I based this advice on Government Code Sections 87100 and 87103(c), which prohibit a public official from participating in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on a source of income aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time the decision is made.

I explained that, pursuant to Government Code Section 82030, income to a public official includes the official's pro rata share of income of any business entity in which the official owns a 10-percent or greater interest. Accordingly, when an official has a 10-percent or greater ownership interest in a business entity, the sources of income to the business entity are also considered sources of income to the official. Therefore, if the official's pro rata share of the business entity's income from a client is \$250 or more during a 12 month period, the client is considered a source of income of \$250 or more to the official, as well as to the business entity.

In Councilmember Bazile's situation, he has a 10-percent or greater ownership interest in his law firm, and his pro rata share of income from the developer to the law firm has exceeded \$250 during the preceding 12 months. Therefore, the developer is a source of income of \$250 or more to Councilmember Bazile, as well as to the Councilmember's law firm. Consequently, Government Code Sections 87100 and 87103(c) prohibit Councilmember Bazile from participating in any decision which would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on either the developer or Councilmember Bazile's law firm. I advised Mr. Lakey that it is irrelevant that Councilmember Bazile's law firm is not representing the developer on this hotel project.

Based on the information that the hotel project in question involves several million dollars, I concluded that the City Council's decision concerning the approval of the hotel project would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the developer. 2 Cal. Adm. Code Section 18702.2. Therefore, I advised Mr. Lakey that Councilmember Bazile must disqualify himself from participating in the decision. Having reached that conclusion, there was no need to analyze whether the reasonably foreseeable effect of the decision would be material as to Councilmember Bazile's law firm.

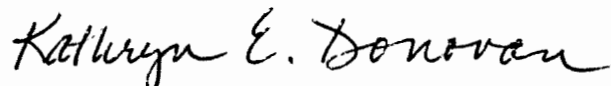
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It was my impression that Mr. Lakey agreed with my analysis of this situation and with my conclusion. I requested him to inform Councilmember Bazile that I would be happy to discuss this matter with him directly, if Councilmember Bazile so wished.

Councilmember Bazile should also be informed that an official who violates the Political Reform Act may be subject to a civil lawsuit, in which a court can impose a fine. A willful violation of the Political Reform Act is also a misdemeanor, punishable by a fine of up to \$10,000 or by imprisonment, and may result in the official being ineligible to run for public office for four years. Furthermore, the Commission can bring an administrative action against an official who has violated the Act, and can impose administrative penalties of up to \$2,000 for each violation. Finally, a court can set aside a governmental decision if the court determines that an official who made the decision had a conflict of interest, that without that official's actions the decision would not have been made, and that setting aside the decision will not cause injury to innocent persons.

At this time, I repeat that I am available to discuss this matter with Councilmember Bazile. Of course, I would also be happy to talk with you, should you have any questions. Please feel free to contact me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:nwm  
cc: Councilmember Leo Bazile